

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 3, 2009

**CHRISTINA DELAROSA SANCHEZ a.k.a. CHRISTINA REYES v. STATE
OF TENNESSEE**

**Direct Appeal from the Criminal Court for Davidson County
No. 2006-B-1743 Steve Dozier, Judge**

No. M2008-01840-CCA-R3-PC - Filed August 5, 2009

The petitioner, Christina Delarosa Sanchez a.k.a. Christina Reyes, appeals the Davidson County Criminal Court's denial of her petition for post-conviction relief. The petitioner, pursuant to a negotiated plea agreement, pled guilty to two counts of felony murder and received two consecutive sentences of life without parole. On appeal, she contends that her guilty plea was not knowingly and voluntarily entered because she suffered from a mental illness at the time she pled and because trial counsel was ineffective in: (1) failing to have a mental evaluation done; (2) improperly advising the petitioner that funds were not available for such an evaluation; and (3) only allowing the petitioner twenty-four hours to decide to accept the plea agreement or proceed to trial. Following review of the record, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ALAN E. GLENN and CAMILLE R. McMULLEN, JJ., joined.

David Hopkins, Nashville, Tennessee, for the appellant, Christina Delarosa Sanchez a.k.a. Christina Reyes.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Senior Counsel; Victor S. (Torry) Johnson, III, District Attorney General; and Rachel Sorbrero and Katrin N. Miller, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual Background

The petitioner, along with a co-defendant, was indicted by a Davidson County grand jury for two counts of first degree premeditated murder, two counts of felony murder, two counts of attempted especially aggravated kidnapping, and one count of theft of property over \$1000.

Subsequently, she entered a negotiated plea to two counts of felony murder, with the remaining counts being dismissed, and was sentenced to two consecutive life sentences without the possibility of parole. The factual basis for the plea, as summarized at the plea acceptance hearing, is as follows:

[The petitioner] was in a relationship with a man and, at some point in that relationship, she led him to believe that she was pregnant with their child. The man she was involved with then was placed into custody, serving a sentence in Rutherford County.

As his sentence was due to expire, [the petitioner] became concerned that their relationship would end, unless she produced a baby to pass off as theirs.

She then started visiting the WIC Office, in hopes of finding a[] Hispanic woman who had an infant child. It was at the WIC Office that she encountered Hilda Grizelda Gutierrez.

Ms. Gutierrez was the mother of Michelle Palla . . . Aguilar, who was three years old, and Michael Aguilar, who was an infant.

[The petitioner] approached Ms. Gutierrez and offered to assist her in obtaining papers that would make it possible for her to travel in and out of the United States, so that she could go out of the country to visit family.

Believing that [the petitioner] would help her with this, she gave [the petitioner] her address. [The petitioner] then enlisted Defendant Anderson to assist her in going to the home of Ms. Gutierrez and kidnapping her baby.

On December second, two-thousand-five, Ms. Gutierrez was preparing to take Michael, her infant son, to a doctor's appointment. [The petitioner] and Anderson came to her door, and Ms. Gutierrez let them in.

During this meeting [the petitioner] and Anderson acted in concert, and they killed both Michelle Aguilar and Hilda Gutierrez.

Ms. Gutierrez was stabbed and strangled to death. She was stabbed in the right side of her neck, her right forehead, her left chest. She had cuts on her hands, her forearms and her chest.

The Medical Examiner found that the cause of death was multiple stab wounds and asphyxia by strangulation.

Michelle Aguilar was also stabbed and smothered to death.

It was further noted at the hearing that the petitioner and Anderson were seen leaving the scene by Rudy Aguilar, the victims' husband and father. The two were also identified by Ms. Gutierrez's friends who had accompanied her to the WIC office when she encountered the petitioner and Anderson. Finally, when questioned by police, both the petitioner and Anderson admitted their involvement in the crimes and implicated each other.

Post-Conviction

Subsequent to her conviction and sentencing, the petitioner filed a timely *pro se* petition for post-conviction relief alleging, among other grounds, ineffective assistance of counsel and an unknowing and involuntary plea. Following the appointment of counsel, an amended petition for relief was filed. A hearing on the petition was conducted, at which the petitioner and trial counsel testified.

The petitioner testified that trial counsel only met with her four or five times during the approximate one-year period between her arrest and guilty plea. She did acknowledge, however, multiple meetings with a social worker from trial counsel's office. According to the petitioner, she discussed the need for a mental evaluation being conducted with trial counsel. She testified that she had suffered from mental problems since the age of nine following her rape by a priest, although she acknowledged she had not previously been diagnosed with any mental disorders. She stated that she "sees things that people can't see," sees dead people, and hears voices. She also related that she had attempted suicide following her incarceration. Afterwards, she was diagnosed with "psychosis" and placed on Thorazine and Celexa, which she was still taking when she entered the plea in this case. Prior to this, she was prescribed Paxil for depression.

The petitioner stated that she told trial counsel she wanted to see a psychiatrist because, when she sees any baby or child, she believes it to be her child. While she was in jail, a cell mate informed her about a disorder known as pseudocyesis or hysterical pregnancy. The petitioner, believing she suffered from this disorder based upon multiple symptoms, discussed this with trial counsel and hoped that it could be used as a defense in her case. The petitioner stated that trial counsel told her that she would research the issue and would request funds from the court. However, according to the petitioner, trial counsel eventually told her that the request for funds had been denied. The petitioner stated that, following the entry of her plea, she learned that the trial court had, in fact, granted approval for funds for an expert evaluation. She stated she would not have pled guilty had she known that the funds were available to pursue the defense.

The petitioner also testified that trial counsel specifically informed her that it would be best not to take the case to trial as it would embarrass the petitioner's family. She did acknowledge, however, that trial counsel also informed her that this assessment was also based upon the strength of the evidence the State had against her. The petitioner also testified that trial counsel informed her of the plea bargain and gave her only twenty-four hours in which to make the decision to accept the offer or proceed to trial. According to the petitioner, she stated she did not understand all of the information that trial counsel related to her and believed she was pleading to a lesser charge. She

further testified that her medication affected her ability to understand at the plea hearing, stating she could not comprehend what she was doing, thinking, or saying.

In contradiction to the petitioner's testimony, trial counsel testified that she met with the petitioner within hours of her arrest and many times afterward, specifically stating five or six times in court and ten or eleven times in jail. She also testified that she requested that a social worker meet with the petitioner each week because of concerns about the petitioner's mental health. She stated that the petitioner did inform her of mental problems but testified that she could find no prior medical records or diagnosis. Nonetheless, she testified that she observed indications of problems. At one point, the social worker became concerned that the petitioner was being over medicated. Trial counsel visited and found the petitioner disoriented and seemingly unaware of what was happening. However, following a change in her medication dosage, the petitioner appeared to improve.

According to trial counsel, she informed the petitioner from the first day that her case was serious. On the day they discussed the plea negotiations, she testified that she told the petitioner to take time to make the decision because of the seriousness of the case, but the petitioner wanted to "get this over with." Trial counsel convinced her to at least take twenty-four hours to consider the decision. Trial counsel testified that, at the time of this discussion, the petitioner's mental clarity was much improved or she would not have allowed her to make the decision. She also testified that she felt like the petitioner understood what was occurring at the plea hearing.

Trial counsel testified that, from the beginning, she was concerned about hysterical pregnancy because of symptoms exhibited by the petitioner. She and the social worker began researching the issue but did not inform the petitioner of this so as "not to contaminate or give her ideas." The social worker, however, kept a journal of symptoms experienced by the petitioner. Trial counsel attempted to find the appropriate expert, but no one in the area was qualified. Trial counsel did find an expert in California. She stated that she then asked the court for funds to hire a regular psychiatrist in hopes of getting a preliminary diagnosis which would support a request for funds to hire the expert in California. The court approved the request for funds, but no evaluation was conducted. Though she does not specifically remember informing the petitioner that the funds had been authorized, trial counsel testified that she never told her that the request had been denied.

A transcript of the guilty plea hearing was also admitted into evidence. The record reflects that the college-educated petitioner was extensively questioned by the court prior to the acceptance of the plea. She specifically acknowledged that she understood all the rights that she was waiving and stated that she was not suffering from a mental infirmity at the time.

After hearing the evidence presented, the post-conviction court took the matter under advisement and subsequently entered a written order denying relief. The petitioner now timely appeals that ruling.

Analysis

On appeal, the petitioner contends that trial counsel did not provide effective assistance of counsel and, as a result, her guilty plea was not entered voluntarily, understandingly, and knowingly. Specifically, she contends that trial counsel was ineffective by: (1) failing to have a mental evaluation done because the petitioner was suffering from a mental illness when the plea was entered; (2) improperly advising the petitioner that funds were not available for such an evaluation; and (3) only allowing the petitioner twenty-hours to decide to accept the plea agreement or proceed to trial.

In evaluating the knowing and voluntary nature of a guilty plea, the United States Supreme Court has held that “[t]he standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160, 164 (1970). In making this determination, the reviewing court must look to the totality of the circumstances. *State v. Turner*, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995); *see also Chamberlain v. State*, 815 S.W.2d 534, 542 (Tenn. Crim. App. 1990). Indeed, a

court charged with determining whether . . . pleas were ‘voluntary’ and ‘intelligent’ must look to various circumstantial factors, such as the relative intelligence of the defendant; the degree of his familiarity with criminal proceedings; whether he was represented by competent counsel and had the opportunity to confer with counsel about the options available to him; the extent of advice from counsel and the court concerning the charges against him; and the reasons for his decision to plead guilty, including a desire to avoid a greater penalty that might result from a jury trial.

Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993). Once a guilty plea has been entered, effectiveness of counsel is relevant only to the extent that it affects the voluntariness of the plea. In this respect, such claims of ineffective assistance necessarily implicate that guilty pleas be voluntarily and intelligently made. *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985) (citing *Alford*, 400 U.S. at 31, 91 S. Ct. at 164).

To succeed in a challenge for ineffective assistance of counsel, a petitioner must demonstrate that counsel’s representation fell below the range of competence demanded of attorneys in criminal cases. *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). Under *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), a petitioner must establish (1) deficient representation and (2) prejudice resulting from the deficiency. In the context of a guilty plea, to satisfy the second prong of *Strickland*, a petitioner must show that “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Lockhart*, 474 U.S. at 59, 106 S. Ct. at 370; *see also Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997). A petitioner is not entitled to the benefit of hindsight, may not second-guess a reasonably based trial strategy, and cannot criticize a sound, but unsuccessful, tactical decision made during the course of the proceeding. *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994).

This deference to the tactical decisions of trial counsel, however, is dependant upon a showing that the decisions were made after adequate preparation. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992). It is the function of the post-conviction court to determine the credibility of witnesses and the weight and value of their testimony brought forth in an evidentiary hearing. *Henley v. State*, 960 S.W.2d 572, 579 (Tenn. 1997).

The issues of deficient performance by counsel and possible prejudice to the defense are mixed questions of law and fact. *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). “A trial court’s *findings of fact* underlying a claim of ineffective assistance of counsel are reviewed on appeal under a *de novo* standard, accompanied with a presumption that those findings are correct unless the preponderance of the evidence is otherwise.” *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001) (citing Tenn. R. App. R. 13(d)). However, *conclusions of law* are reviewed under a purely *de novo* standard, with no presumption of correctness. *Id.* at 458.

In its order denying relief, the post-conviction court made the following findings of fact:

The Court is of the opinion that the Petitioner failed to prove any factual allegations by clear and convincing evidence that her counsel was ineffective. The Court reviewed the transcript of the guilty plea and notes that [the] petitioner was asked if she was suffering from any mental illness or mental health problem. The petitioner responded that she was not. The Court told the petitioner she could ask questions if she needed to[,] and [the] petitioner responded that she understood. She stated she had talked with her attorney about the charges, defenses, and her options in the case. The Court explained the sentence the petitioner would be receiving[,] and she stated she understood. She stated she went to college and that she did not have any issues understanding her plea petition. In addition, the petitioner had her attorney read a statement to the victim[s’] family at the end of the entry of the plea expressing her remorse for her actions.

The Court accredits the testimony of trial counsel that counsel met with [the] petitioner on sufficient occasions throughout the development of this case and that [the] petitioner was competent and understood her decision and actions in entering the plea. The petitioner did not present any reliable evidence that she suffers from mental health issues. The Court finds the petitioner could not have believed she was entering a plea to a charge that would receive a lesser sentence. The Court was clear with the petitioner as to the sentence she would receive based upon the plea she was entering. The Court finds[,] based upon the questioning of the petitioner at the entry of the plea[,] that she was aware of the events of the plea colloquy and was aware of the consequences of her actions. The Court accredits the testimony of trial counsel that she did not inform the petitioner that the Court had denied her motion for funds. There was no proof other than the claims of the petitioner supporting the position that “hysterical pregnancy” would prevent a knowing and intelligent plea from being

entered. The Court does not find the testimony of the petitioner at the post-conviction hearing credible.

Review of the record reveals nothing which preponderates against the extensive findings made by the post-conviction court. The court's findings were based upon credibility determinations, which this court will not revisit. Trial counsel specifically testified that although she did not specifically remember informing the petitioner that the fund request had been approved, she did not tell her that it had been denied. Moreover, trial counsel also specifically testified that it was the petitioner who insisted upon making the decision to accept the plea within twenty-four hours, despite trial counsel's advice to the contrary. Additionally, it was noted in the record that despite the fact that the decision was made by the petitioner in that short period of time, the plea itself was not entered until several days later.

The record likewise supports the post-conviction court's finding that the petitioner failed to establish that she suffered from a mental disorder which would require an evaluation. No medical reports or findings were entered to support the petitioner's claim that she suffered from "hysterical pregnancy" or what effect the disorder would have had with regard to her actions in the crime. *See Black v. State*, 794 S.W.2d 752, 755 (Tenn. Crim. App. 1990). Again, the post-conviction court specifically found that the petitioner's testimony in this regard was not credible. Thus, the petitioner has failed to put forth proof which would establish her claim of ineffective assistance of counsel.

A review of the transcript of the plea hearing supports the post-conviction court's finding that the petitioner knowingly, voluntarily, and intelligently entered the plea. The college-educated petitioner was thoroughly questioned by the court regarding her understanding of the plea, the consequences of the plea, and the rights she was waiving. Again, as previously noted, the post-conviction court specifically accredited trial counsel's testimony. Trial counsel testified that though there were periods when the petitioner was disoriented, the problem was resolved with medication adjustments. She testified that during the discussion regarding the plea and during the guilty plea hearing itself, she believed that the petitioner was aware and understood both the agreement itself and the consequences of its entry. Thus, the petitioner's claim is without merit.

CONCLUSION

Based upon the foregoing, the denial of post-conviction relief is affirmed.

JOHN EVERETT WILLIAMS, JUDGE